

IN SENATE OF THE UNITED STATES.

MAY 5, 1848.

Submitted, and ordered to be printed.

Mr. YULEE made the following

REPORT:

The Committee on Naval Affairs, to whom was referred the memorial of John L. Worden, submit to the Senate the following report from the Fourth Auditor in regard to this claim, and ask to be discharged from its further consideration.

TREASURY DEPARTMENT,
Fourth Auditor's Office, January 25, 1848.

SIR: Upon looking over the memorial and accompanying papers in the case of Passed Midshipman John L. Worden, which you enclosed to me, there is nothing which suggests itself to my mind as proper to be added to the observations contained in the report which I made to the Secretary of the Navy on the 23d of March, 1846, upon the reference to this office of a letter of the late Hon. John Fairfield, who was at that time chairman of the Committee on Naval Affairs. I beg leave, therefore, respectfully to refer you to that report, which is included among the papers now returned, for the views which are entertained by this office in relation to the claim of the memorialist.

I have the honor to be, sir, very respectfully, your obedient servant,

A. O. DAYTON.

To the Hon. D. L. YULEE,
Ch'n of the Com. on Naval Affairs, U. S. Senate.

TREASURY DEPARTMENT,
Fourth Auditor's Office, March 23, 1846.

SIR: A letter addressed to you, on the 7th instant, by the Hon. John Fairfield, chairman of the Committee on Naval Affairs of the Senate, requesting information in relation to a claim of Passed

Midshipman John L. Worden to the pay of a grade superior to his own, for services alleged to have been rendered on board the United States ship Relief from the 1st of December, 1840, to the 30th of May, 1842, having been referred to this office for a report, I have the honor to submit the following statement and observations upon the subject:

The Relief, at the period in question, was a store-ship. Although she was provided with a small armament of six guns to defend her cargo in case she should be attacked, she was not sent out for military purposes, but merely to convey provisions for the use of the squadron in the Pacific, which were placed in charge of a store-keeper on board.

The regulations fixing the war complement of the several classes of public vessels not being applicable to her, the department made a special assignment of the number of officers and men which should constitute her complement. A brig or schooner of war, agreeably to the regulations, carries ten guns, has a crew of sixty petty officers and men, and is allowed three lieutenants, (including the one commanding,) a purser, an assistant surgeon, and five midshipmen. The crew of the Relief consisted of but forty-four petty officers and men; and the officers ordered to her by the department were two lieutenants, (including the one commanding,) an assistant surgeon, two passed midshipmen, and one midshipman. It was consequently implied that all the ordinary duties were to be performed by the officers thus ordered in their own proper grades, else the department would have assigned others, or given acting appointments to those ordered.

The higher duties, which could not be performed by the two lieutenants, would, of course, devolve upon the passed midshipmen as such. After the vessel sailed, the lieutenant commanding, without a shadow of authority from the department, conferred upon Mr. Worden, one of the passed midshipmen, an acting appointment as master, and another as lieutenant. It will be observed that these appointments were not made in consequence of any unforeseen emergency which gave rise to new duties, but they were made with a view to the performance of duties which were anticipated and as well known to the department before the vessel sailed as they were to her commander afterwards. The duties to be discharged by Mr. Worden were not changed by the acting appointment, but only the capacity in which he was to execute them.

The department had directed that he should perform them as passed midshipman; the commander of the vessel directed that he should perform them as a lieutenant. The question upon which the case turns, then, is simply *one of authority between the department and the commander*; and such a question, surely, is easy of solution. There is no law which fixes either the duties of the several grades of officers or the number of each grade to be assigned to vessels of any particular class. That is the clear prerogative of the department; and it would be preposterous to hold that, because a certain sort of duty is ordinarily performed in a ship-of-the-line

or a frigate by officers of a particular grade, the department is bound to assign the same kind of duty, in a store-ship or a transport, to officers of the same grade. The whole matter is within the legal discretion of the department, and any act of a subordinate officer which would interfere with the exercise of that discretion is altogether null and void. The duties performed on board of the store-ship Relief by Mr. Worden were not those of a lieutenant, but of a passed midshipman, made so by the department in the exercise of its lawful authority, and, therefore, they entitled him, under the law, to no increase of his regular pay. His claim was not decided by this office, but by the Secretary of the Navy, to whom it was referred; and it was distinctly understood that the allowance of the pay of a master was made to him not as a matter of right but of liberality: and that it was so is evident from the fact that not even a brig or schooner of war, with her complement of seventy officers and men, is entitled, under the regulations, to a master, but only to a master's mate, whose pay is less than that of a passed midshipman.

I think it proper for me to add, not as a circumstance which can have any legitimate effect upon the legal rights of Mr. Worden, but as one which may have a very proper influence upon the equitable discretion of Congress in the dispensation of its bounty, that this is one of a large number of cases which have been decided through a course of years upon the same principle, and that the allowance of the claim of the memorialist would open the way for a host of others, which, a precedent having been thus established, could not be rejected consistently with the impartiality which Congress would feel itself bound to observe.

The papers referred to me are herewith returned.

I have the honor to be, sir, very respectfully, your obedient servant,

A. O. DAYTON.

GEORGE BANCROFT,
Secretary of the Navy.

